IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 34452 of 2006(B)

AGAINST THE ORDER IN IA 7822/2006 IN
OS.-/2006 of PRL.M.C.,THIRUVANANTHAPURAM.

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PETITIONER:

P.UPENDRAN, S/O.PONNAPPAN, HINDU,
AGED 48, RESIDING AT T.C. 3/56, LEKSHMI NIVAS,
VAYALARIKATHU MURI, ULLOOR VILLAGE,
KESAVADASAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY
THE DISTRICT COLLECTOR, COLLECTORATE,
VANCHIYOOR, THIRUVANANTHAPURAM-35.

2. THE DEPUTY COLLECTOR (LA),HAVING OFFICE
AT COLLECTORATE, VANCHIYOOR, THIRUVANANTHAPURAM-35

3. THE SPECIAL TAHSILDAR (LA),
ADDL.L.A. UNIT, HAVING OFFICE AT VANCHIYOOR,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.V.T.K. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Ext.P1:- A true copy of the Section 4(1) notice in Form No.4 (a) under Rule 7(1) of the Kerala Land Acquisition Rules received by the petitioner.

Ext.p2:- A true copy of the plaint in the suit filed before the Munsiff's Court, Thiruvananthapuram by the petitioner.

Ext.P3:- A true copy of I.A.7822/2006, the application under section 80(2) submitted by the petitioner along with the suit filed before the Munsiff Court, Thiruvananthapuram.

Ext.P4:- A true copy of the application for issue of temporary injunction filed along with the suit.

Ext.P5:- A true copy of the application for appointment of an Advocate Commissioner for local insection filed along with the suit.

Ext.P6:- The typed copy of the order dated 27/9/2006 on I.A.No.7822/2006 (unnumbered).

Ext.P7:- A true copy of the docket sheet of the plaint containing the endorsement.

/true copy/

P.S. To Judge

M.Sasidharan Nambiar,J.

W.P.(c) No.34452 of 2006

Dated, this the 5th day of January, 2007

JUDGMENT

Petitioner is the plaintiff and respondents the defendants in the unnumbered suit before Principal Munsiff, Thiruvananthapuram. Suit was filed along with I.A.7822/06 an application under sub section (2) of Section 80 of the code of Civil Procedure for leave to institute the suit without sending a notice under section 80 of Code of Civil Procedure. Under Ext.P6 order, learned Munsiff dismissed the application holding that the object behind the filing of the suit is only to value the acquired property and it is not an urgent or immediate relief and therefore petitioner is not entitled to get leave to institute the suit without sending a notice under section 80 of the Code of Civil Procedure. This petition is filed under Article 227 of the Constitution of India

challenging Ext.P6 order.

2. Learned counsel appearing for petitioner and Government pleader were heard.

3. The case of petitioner was that before taking possession of the acquired property unless the data regarding the nature of the property is not ascertained, petitioner will be left with no remedy and in such circumstance, it is necessary to get appointment of a Commission urgently and hence learned Munsiff should have granted the leave sought for.

4. The case of the petitioner was that in the award the property is described as nilam, when infact it is not nilam but a garden land and unless the data is made available, respondent may contend that they have filled up the paddy field and in such circumstance, learned Munsiff should have granted the leave to institute the suit. Considering the peculiar facts and circumstances of the case, learned Munsiff should have allowed I.A.7822/06 and permitted petitioner to institute the suit without sending a notice as

provided under sub section (1) of Section 80 of the Code of Civil Procedure.

Writ petition is allowed. Ext.P6 order is quashed. I.A.7822/06 stands allowed.

M.SASIDHARAN NAMBIAR
JUDGE

Tpl/-